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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/776,844

02/11/2004

Lon J. Wilson

1789-12301

3026

23505

7590

03/27/2009

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EXAMINER

PERREIRA, MELISSA JEAN

ART UNIT

PAPER NUMBER

1618

NOTIFICATION DATE

DELIVERY MODE

03/27/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

pathou@conleyrose.com

<p align="center"><b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b></p>	<p><b>Application No.</b> 10/776,844</p>	<p><b>Applicant(s)</b> WILSON ET AL.</p>	
	<p><b>Examiner</b> MELISSA PERREIRA</p>	<p><b>Art Unit</b> 1618</p>	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 05 March 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1,2,4,5,7,23,27-32 and 37-40.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see below.  
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_  
13. ☐ Other: \_\_\_\_\_.

/Michael G. Hartley/  
Supervisory Patent Examiner, Art Unit 1618

Claims 1,2,4,5,7,23,27-32 and 37-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bolskar et al. (US2003/0220518A1) in view of Yan et al. (US 5,830,539) and in further view of Kelley et al. (US 6,958,216B2).

Applicant asserts that the combination of the prior art does not contain the limitation of at least two vancomycin molecules coupled to the fullerene molecule via the at least one linking molecule.

Bolskar et al. (US2003/0220518A1) teaches of a fullerene derivatized with a cyclopropane ring (single linking molecule) having two functional groups, such as carboxylates, COO- (Bolskar et al. p4, [0027]; p5, [0035],[0039]) where the carboxylate functional groups provide ready linking points for further derivatization of organic groups, antibodies, targeting groups, etc. (Bolskar et al. p6, [0045]). Yan et al. teaches of the functionalization of fullerenes with targeting groups, such as antibiotics. Therefore it would have been obvious to one skilled in the art to substitute the targeting group (i.e. antibiotic) of Yan et al. for the targeting group of Bolskar et al. which includes functionalizing both carboxylate groups of the single linking molecule (i.e. cyclopropane).

Applicant asserts that the office action is mistaken in suggesting that the disclosure of the broad genus of "antibiotics" by Yan render obvious every species of antibiotic.

It is obvious to those skilled in the art to make known substitutions on compounds that are similar in structure and function to observe the effects, such as antibiotics on the function of such compounds and to use the observations/data to further manipulate a compound to generate the desired effect, such as kill or inhibit the growth of bacteria.

Continuation of 5. Applicant's reply has overcome the following rejection(s): claims 1-7,9,10,23,27-40,42 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bolskar et al. (US2003/0220518A1) and Yan et al. (US 5,830,539) and in view of Lei et al. (US 6,777,445B2) as claim 35 is canceled and therefore the reference of Lei et al. is withdrawn as it was used to teach of a water-soluble fullerene (C60) derivative to inhibit tumor necrosis factor-alpha.